

**REMARKS**

Claims 1, 63, 65, 67 and 69 have been amended by incorporating subject matter from claims 3 and 78 into them to require a nylon 611/dimethicone copolymer, a volatile silicone oil and a volatile non-silicone oil. Claim 1 has also been amended by re-including organogelling agents 12-hydroxystearic acid or its derivatives, esters and amides of N-acylamino acids, and dibenzylidenesorbitol and its derivatives in it.

Claims 33-42 have been amended to focus on specific gelling agents and oils.

Claims 2, 3, 14-27, 50-53, 77 and 78 have been canceled.

Applicants respectfully submit that the above claim amendments and cancellations have rendered moot the objections to claims set forth in the Office Action.

Claims 1, 4-13, 28-49 and 54-69 are currently pending.

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 6,451,295 (“Cai”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

The claimed invention relates to compositions containing a specified organogelling agent and a specified combination of volatile oils to yield a product effective in providing color to keratinous material upon application. Significantly, the claimed invention relates to compositions containing at least one pigment in an amount sufficient to provide a coloring effect to keratin materials upon application as well as to methods of making or using such compositions. Cai does not teach or suggest the specified combination of ingredients to yield the invention compositions, let alone any benefits associated with combining the required gelling agent with the required polymer in the presence of the required volatile oils and a result effective amount of colorant.

The basis for the pending obviousness rejection is two-fold: (1) Cai's compositions can be cosmetic compositions other than deodorants (for example, sunscreen compositions) which contain ingredients which could theoretically provide color (for example, zinc oxide); and (2) one of ordinary skill in the art would have been motivated to use Cai's sticks for any cosmetic purpose and, thus, would have been motivated to use such sticks for makeup purposes and, thus, would have been motivated to add effective amounts of colorants to the compositions. However, these asserted bases miss the point and are legally insufficient to base an obvious rejection on.

Assuming Cai's compositions contain colorant, the colorant would serve the purpose of providing a colored (deodorant) composition. However, given that Cai's deodorants are clear (see, Title), Cai's compositions must contain such insignificant amounts of colorant, if any, that they do not even produce a colored product. Such clear products cannot teach or suggest the claimed invention which requires the presence of result effective amounts of pigments upon application. Interpreting Cai to disclose compositions which necessarily provide color upon application (because they might contain ingredients such as zinc oxide)

stretches Cai's disclosure too far and, in fact, is contrary to the disclosure -- nowhere does Cai teach or suggest that his compositions can provide colorant in a result effective manner. Accordingly, the first basis for the rejection is improper.

Even assuming that Cai's compositions are colored to some degree, such a composition would not teach or suggest the claimed compositions. Deodorants, even if colored, are compositions which do not leave a colored mark upon application under the arms. Rather, application of deodorants results in a clear mark. This is the effect deodorant makers strive for and advertise -- "goes on clear"; "no marks," etc. Indeed, this is the effect Cai achieved in his last example when he applied his "clear" composition without leaving any "white residue."

A colored deodorant which leaves an uncolored mark upon application under the arms is a far cry from the claimed invention which relates to compositions which purposely impart color to skin, lips, eyelashes, etc. upon application, thereby beautifying the skin, lips, eyelashes.

Cai states that his deodorants can contain coloring agents along with other conventional ingredients. (Col. 24, lines 45-55). However, in the preceding paragraph, Cai states that "active materials" such as fragrances and antimicrobial agents can be incorporated into his compositions. Significantly, coloring agents are not identified as "active materials."

Similarly, at col. 22, lines 15-25, Cai defines "active ingredients" as being present in an amount sufficient to have a functional effect. Again, Cai describes fragrances and antimicrobial agents as active ingredients, but does not include coloring agents as an active agent. Rather, once again, Cai refers to coloring agents as merely being optional ingredients. (Col. 22, lines 26-34).

Clearly, Cai does not identify colorants as being acceptable active agents that can be present in result effective amounts. As a result of this omission, Cai cannot teach or suggest adding colorants as active agents, or in an amount sufficient to have a functional effect (i.e., provide color upon application). This conclusion is reinforced by Cai's purpose: to produce clear compositions.

Stated another way, Cai neither teaches nor suggests adding sufficient pigment in an acceptable manner such that the pigment will have a functional effect and provide color upon application to the skin. Interpreting Cai such that it would have been obvious to add result effective colorant to his compositions is, again, directly contrary to Cai's disclosure -- Cai instructs one of ordinary skill in the art to produce clear cosmetic compositions, not effective color compositions. Accordingly, the second basis for the rejection is improper.

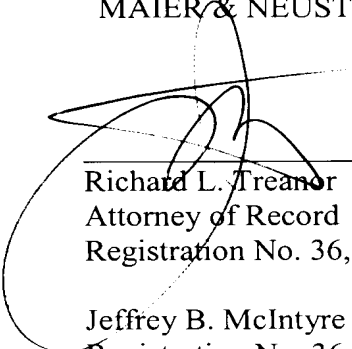
Application No. 10/517,390  
Response to Office Action dated November 12, 2008

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. §103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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